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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,756	10/10/2001	Yelena Loginova	967.061US1	2366

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EXAMINER	
HUI, SAN MING R	

ART UNIT	PAPER NUMBER
1617	

MAIL DATE	DELIVERY MODE
11/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/975,756	LOGINOVA ET AL.	
	Examiner	Art Unit	
	San-ming Hui	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 August 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,7,9-12 and 14-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,7,9-12 and 14-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 18, 2008 has been entered.

Claims 1-3, 7, 9-12, 14-26 are pending.

The examiner notes that claim 16 is apparently depending from claim 1. To avoid potential rejection under 35 USC 112, second paragraph, appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 9, 10, 14-18, rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 7, 9-12, and 14-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,653,969 ('969) in view of US 5,804,173 ('173), '173 is of record.

'969 teaches a low residue, rinse-off hair care product, such as gel, containing copolymer of methyl methacrylate and ethyl acrylate (See col. 7, lines 44 and col.10, line 39). '969 teaches the A monomer unit can be present in a range of 50-85% and monomer B as 15-40% (See col. 6, second to last paragraph and col. 8, first paragraph). Hydrocarbon such as isoparaffin is taught as useful as solvent (See col. 12, lines 9-14 for example). '969 also teaches that Ceteareth-20, dimethicone, isododecane can be used (See col. 25-28, Examples 3-10).

'969 does not expressly teach the surfactant as ethoxylated alcohol. '969 does not expressly teach the additional agent such as sunscreen is added into the low-

residue hair product. '969 does not expressly teach the herein claimed ratio between the monomer unit of acrylate copolymer as 7.5-8.5 : 1.8-2.3.

'173 teaches a easy-off hair product that can incorporate the surfactant can be ethoxylated alcohols (See col. 25, lines 11-12). '173 teaches a mixture useful for cosmetic composition for hair and skin care comprising a copolymer and carriers. Carriers included isoparaffin and cyclomethicone. Solvents or carriers can be comprised in the hair care composition in a range of about 10-98% (See col. 15-16). '173 teaches the hair care products can be formulated into various known formulations such as gel (See col. 15-16). About 75% of isoparaffin and around 60% of cyclomethicone are used to dissolved the copolymer in examples 11 and 17, polymer-solvent mixtures. '173 also teaches the herein claimed surfactants such as Steareth-20 and Ceteareth-20 (See col.25, lines 15-26). '173 also teaches the copolymer formulation may be used as a component for gels, lotions, and sunscreen (See col. 15, lines 48-67, col. 19, lines48 – col. 20, line27). '173 also teaches such composition having an improved "wash-out" characteristics.

It would have been obvious to one of ordinary skill in the art at the time of invention to employ the ethoxylated alcohol surfactant and sunscreen agent taught in '173 into the hair composition of '969. It would have been obvious to one of ordinary skill in the art at the time of invention to employ the herein claimed ratio of monomers in the hair product of '969.

One of ordinary skill in the art would have been motivated to employ the ethoxylated alcohol surfactant and sunscreen agent taught in '173 into the hair

composition of '969. It is clear that both of the easily rinse-off hair products of '969 and '173 are similar. Therefore, the surfactant and the suncreen agents useful for hair composition of '173 should also be useful for hair composition of '969 since the employment of these agents would not affect the rinse-off properties of the hair product of '969. One of ordinary skill in the art would have been motivated to formulate and employ the herein claimed copolymer with the herein claimed weight ratio as 7.5-8.5 : 1.8-2.3 since the optimization of result effect parameters (dosage range, dosing regimens) is obvious as being within the skill of the artisan, absent evidence to the contrary.

Response to Arguments

Applicant's arguments filed August 18, 2008 averring the cited prior art's failure to teach the herein claimed range have been fully considered but they are not persuasive. The examiner notes that the ratio taught in the cited prior art actually encompasses the herein claimed ratio. Therefore, absent evidence showing the criticality of the herein claimed ratio, possessing the teachings of the cited prior art, one of ordinary skill in the art would have been motivated to optimize the ratio to what is claimed herein. Furthermore, '969 teaches a gel which contains copolymer of methyl methacrylate (monomer A as described in '969) and ethyl acrylate (monomer B as described in '969) (See col. 7, lines 44 and col.10, line 39). '969 teaches the A monomer unit can be present in a range of 50-85% and monomer B as 15-40% (See col. 6, second to last

paragraph and col. 8, first paragraph). Therefore, the herein claimed limitations are met.

Applicant's arguments field August 18, 2008 averring the cited prior art's failure to teach '173's failure to teach the herein claimed co-polymer have been considered, but are not found persuasive. The purpose of citing '173 is not for its teachings on co-polymer. Therefore, the arguments are irrelevant to the basis of the rejection under 35 USC 103(a), which are considered moot. Taking the teachings of the cited prior art as a whole, one of ordinary skill in the art would arrive at the herein claimed composition.

Applicant's arguments filed August 18, 2008 averring the cited prior art's, especially '173's, failure to teach the rinse-off or wash-off characteristics is being associated with the same co-polymer as '969, have been considered, but are not found persuasive. Again, the purpose of citing '173 is the secondary cosmetic ingredients taught in '173. The rinse-off characteristics of '173 can also be found not only in the co-polymer used in '173, but also in that of '969. '969 is using different co-polymer than that of '173 and yet the co-polymer of '969 possesses the rinse-off capabilities. The citing of '173 is to demonstrate that the herein claimed ingredients is compatible with and do not detrimental to the rinse-off characteristics of the hair care product. Therefore, possessing the teachings of the cited prior art, one of ordinary skill in the art would be motivated to combine the teachings of the cited prior art and arrive at the instant invention, absent evidence to the contrary.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (571) 272-0626. The examiner can normally be reached on Mon - Fri from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, PhD., can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

San-ming Hui
Primary Examiner
Art Unit 1617

/San-ming Hui/
Primary Examiner, Art Unit 1617